

REMARKS

As a preliminary matter, it is respectfully submitted that the amendment to claim 2 be entered to place the application in better form for appeal. The amendment does not raise new issues because it simply incorporates dependent claim 4 into claim 2, so that claim 2, as amended, has already been fully considered and examined by the Examiner.

Independent claims 1 and 2 stand rejected as follows: Claim 1 stands rejected under 35 U.S.C. § 102 as being anticipated by Misenhimer et al. '541 ("Misenhimer") and Wulf et al. '821 ("Wulf"); and claim 2 stands rejected under 35 U.S.C. § 102 as being anticipated by Wulf.

A. Wulf

With respect to Wulf and claim 1, the Examiner admits that Wulf does not explicitly disclose the claimed "speed reducer." In order to obviate this deficiency of Wulf, the Examiner alleges that "since Wulf is replete with teachings of varying the rotary speed, a "speed reducer" inherently must exist in order to slow down the blade speed." However, as is well known in patent prosecution, "inherency may not be established by probabilities or possibilities," *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999). In the instant case, it is respectfully submitted that Wulf does not need a "speed reducer," let alone a "speed reducer" in the specified position recited in claim 1.

In fact, it appears that Wulf slows down blade speed simply by altering the current to the motor so as to change the *motor* speed; and therefore does not use, nor need to use, a "speed reducer" element. Indeed, Wulf expressly references *motor* speed as it affects blade speed (*see, e.g., col. 15, lines 37-38; see also col. 12, lines 45+ corresponding to Figure 22, illustrating*

electrical speed control for the motor). In any event, the device of Wulf certainly does not *necessarily* have a “speed reducer” as required to support the Examiner’s inherency argument. Moreover, as Wulf is directed to a food blender, the use of a speed reducer would not be desired because of the blender’s need to *increase* blade speed *relative to the motor speed*.

With respect to Wulf and claim 2, the Examiner has maintained his broad interpretation of the claimed “washing apparatus” as inclusive of a food blender. Accordingly, claim 2 has been amended to incorporate the “speed reducer” recited in claim 4, and is submitted to be patentable over Wulf for the same reasons discussed above with respect to claim 1.

B. Misenhimer

With respect to claim 1 and Misenhimer, the Examiner relies on the disclosed “gear means” described on page 1, col. 2, line 33, as the claimed “speed reducer.” However, the disclosed “gear means” merely functions to translate the rotation of the pulley 19 to the shaft 27 (*see* page 2, col. 1, lines 17-19 and Figure 4). This translation operates to convert horizontal-axis rotation to vertical-axis rotation, rather than change speeds. Misenhimer is completely silent as to changing speeds using the alleged “gear means.”

Moreover, even if the “gear means” changes speeds, it certainly is not inherent that the speed is reduced. Given the early date of the Misenhimer patent, it is more likely that the gearing would be designed to *increase* the speed to help supplement the weaker motors of that time. Nonetheless, as mentioned above, “inherency may not be established by probabilities or possibilities,” *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999). In the instant case, the gear ratio of Misenhimer is probably 1:1, or 1:2 to increase speed; but in any event, it is

respectfully submitted that the alleged "gear means" of Misenhimer is not *necessarily* designed to reduce speed as would be required to maintain the pending rejection.

As anticipation under 35 U.S.C. § 102 requires that each and every element of the claim be disclosed, either expressly or inherently (noting that "inherency may not be established by probabilities or possibilities", *Scaltech Inc. v. Retec/Tetra*, 178 F.3d 1378 (Fed. Cir. 1999)), in a single prior art reference, *Akzo N.V. v. U.S. Int'l Trade Commission*, 808 F.2d 1471 (Fed. Cir. 1986), based on the forgoing, it is submitted that the cited prior art does not anticipate claims 1 and 2, nor any claim dependent thereon. The Examiner is directed to MPEP § 2143.03 under the section entitled "All Claim Limitations Must Be Taught or Suggested", which sets forth the applicable standard for establishing obviousness under § 103:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)).

In the instant case, the pending rejection does not "establish *prima facie* obviousness of [the] claimed invention" as recited in claim 7 because the proposed combination fails the "all the claim limitations" standard required under § 103.

Under Federal Circuit guidelines, a dependent claim is nonobvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as claims 1 and 2 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also patentable. In addition, it is respectfully submitted that the dependent claims are patentable based on their own merits by adding novel and non-obvious features to the combination.

In this regard, it is respectfully requested that withdrawn claims 11-18 and 23-36 be rejoined as being dependent, directly or indirectly, on allowable claims 1 and/or 2.

Based on the foregoing, it is respectfully submitted that all pending claims are patentable over the cited prior art. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. § 102 and 103 be withdrawn.

CONCLUSION

Having fully responded to all matters raised in the Office Action, Applicants submit that all claims are in condition for allowance, an indication for which is respectfully solicited. If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicants' attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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